

Guide For UAE Economic Substance Regulations



Do the Regulations only apply to UAE entities that are part of a foreign multinational group, or that are owned by a foreign shareholder?

Nope. The rules establish the requirements for economic substance for any UAE entity that carries out relevant activities, needless of whether the UAE entity is held by the foreign multinational group. However, a distribution business in the UAE, a service business center, head office or a high-risk intellectual property business is subject to the Rules only if the company from the UAE makes transactions with foreign companies of the group. Distribution activities, service center, head office and high-risk intellectual property, where transactions between entities of the UAE do not fall under the requirements of an economic entity.

Is a company registered under a free zone company (offshore) regime subject to the rules?

Yes, if the “offshore” company carries out the relevant activities.

Based on the listed activities on the commercial license, should a Licensee undertake a Relevant Activity?

The commercial license states it is a relevant activity under the hood of its scope, the licensee can undertake activities under specified rules and regulations. Thus, the licensee undertakes activities as mentioned in the commercial license during the financial period.

Who is exempt from the Regulations?

Licensees who are directly or indirectly at least 51% owned by the federal government or the government of the emirate, government body or body of the UAE are exempted from the Rules.

When a licensee does not undertake relevant activities during the financial period, what are the measures taken?

If a licensee does not undertake a Relevant Activity during a financial period, it does not need to meet the Economic Substance Test. The Licensee would not be required to notify (see question 38) its Regulatory Authority or submit an Economic Substance Return (see question 39) for the relevant financial period.

What happens if there is no income on taking up relevant activities during a financial period by obtaining the license.

A licensee should notify its Regulatory Authority when the licensee does not earn any income from relevant activities done during the financial period while they are not required to meet the Economic Substance Test.

If a licensee obtains income only from the Relevant Activity is earned from outside the UAE, then is the licensee an exempt from regulations?

The licensee must produce the economic essence in the UAE that comprises all income from the UAE along with the income received outside the UAE and on producing the licensee is not exempt from the rules.

What is meant by “adequate” economic substance or “appropriate” economic substance?

The UAE recognizes that enterprises vary in size and nature, and what is adequate and appropriate will depend on the nature and level of activities carried out and the level of income received by the Licensee. Thus, the provisions and guidelines do not contain a minimum standard which is considered to be “adequate” or “appropriate”. Regulators are expected to bring a pragmatic approach in evaluating whether a Licensee has passed the economic substance test or not, recognizing that the type and level of activity of Licensee may fluctuate throughout the financial period and from year to year.

Can the Licensees who are part of the same group prefer to be evaluated on a “consolidated” basis or will the economic substance be evaluated on a Licensee-by-Licensee basis?

No. The rules do not allow the consolidation of licensees in one group for the purpose of an economic entity. Each Licensee will have to comply with the Rules and demonstrate the economic essence on an individual basis. At the same time, the corresponding economic substance (personnel, functions, assets, etc.), supported in the UAE by other companies of the group, can be taken into account if this economic substance is provided to the Licensee in accordance with the type of service/outsourcing agreement (see Question 21).

In the UAE, should board meetings be held by the Licensee?

Yes, a sufficient number of board meetings should be held in the UAE. What is considered a sufficient number of meetings of the board of directors will depend on the nature and extent of the relevant activities carried out by the Licensee. For each board meeting held in the UAE:

- *A quorum of directors must be physically present in the UAE.*
- *The minutes of the meeting must be saved and signed in the UAE.*
- *Directors present at a meeting of the board of directors must have the necessary skills and experience to fulfil their fiduciary duties. A holding’s business is not required to be directed and managed in the UAE unless required by the appropriate licensing authority.*

Do employees who perform the CIGAs need to be resident in the UAE?

The licensee performing CIGAs must be a resident of the UAE. The employees or other persons who are not a resident of the UAE should process the economic substance only when

(i) appropriate actions are performed when an individual is present in the UAE, and under the guidance of the Licensee and (ii) the Licensee bears the relevant expenses of the individual who is not a resident of the UAE.

Do the directors of the Licensee need to be resident in the UAE?

No, directors only need to be physically present in the UAE to participate in relevant meetings of the Licensee’s council.

Can directors be counted as employees?

Yes, directors who, in addition to fulfilling their fiduciary duties, also perform CIGA, can be considered employees of the Licensee for the purpose of testing the Economic Substance.

Does the UAE tax resident certificate for the financial period have evidence that it meets the economic substance test for this corresponding period?

No, while obtaining a UAE tax residency certificate requires a certain minimum presence in the UAE, the UAE tax residency certificate does not in itself prove that the Licensee has sufficient economic content in the UAE in relation to the related activities and income received from these activities.

What can a Licensee outsource?

A Licensee can outsource any or all of its CIGAs so long as the outsourced activities are performed in the UAE. Effectively, this means that a Licensee can use UAE based (i) employees and (ii) physical assets, which even includes premises of the third parties or related entities to fulfil the satisfaction of the Economic Substance Test. The Licensee is unable to outsource the “directed and managed”, as the Licensee is obliged to demonstrate supervision and control over the relevant activities in the UAE.

To whom can a Licensee outsource?

A Licensee can outsource, contract or delegate CIGAs to related parties or to third-party service providers, as long as the Licensee monitors and retains the ability to control the outsourced activities.

What should a Licensee do under an outsourcing arrangement?

A Licensee should:

- *Possess enough supervision of the outsourced activity; and*
- *Ensure the outsourced activity is conducted in the UAE; and*
- *Ensure the outsourcing provider has adequate substance in the UAE; and*
- *Ensure there is no double-counting of the outsourcing providers resources. The above can be evidenced through contractual agreements that govern the relationship and responsibilities of each party.*

Can a Licensee outsource any of its activities to a foreign person?

Activities that are not CIGAs (e.g. back-office functions) can be outsourced to related parties or third-party service providers which are situated outside the UAE without

adversely impacting the economic substance of the Licensee in the UAE.

For Enquiries Contact KGRN Team

Managing Partner – Gopu Rama Naidu

E-mail : support@kgrnaudit.com. Ph: +971 455 70204

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